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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 20, 1998

**EXPARTE**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: In the Matter of Petition of U.S. West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance – CC Docket No. 97-172

Dear Ms. Salas:

Please enter into the record of the above proceeding the attached letter to Michelle Carey of the Common Carrier Bureau regarding the provision of National Directory Assistance.

In accordance with 47 C.F.R. 1.1206(a)(1) of the Commission's rules, the original of this letter and one copy are being filed with your office for inclusion in the public record. Acknowledgment and date of receipt are requested. A duplicate of this letter is included for this purpose.

Please direct any inquiries concerning the foregoing to the undersigned.

Sincerely,

Attachment

No. of Copies rec'd 0 + 2  
List A B C D E



Ms. Michelle Carey  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, DC 20554

Christine Jines  
Director -  
Federal Regulatory

March 20, 1998

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Re: In the Matter of Petition of US West Communications, Inc. for a Declaratory Ruling  
Regarding the Provision of National Directory Assistance. CC-Docket 97-172.

Dear Ms. Carey:

SBC is filing these ex parte comments in further support of US West's Motion for Declaratory Ruling requesting that the Federal Communications Commission (FCC) determine that the Telecommunications Act permits US West to offer National Directory Assistance (NDA) services to its customers. SBC supports US West's Motion for Declaratory Ruling for the following reasons: 1.) the provision of a telephone number to a customer is not an interLATA service under the Telecommunications Act; 2.) customers want the Bell Operating Companies (BOCs) to provide NDA and the Commission should be in favor of providing the customer more choices, not less; 3) the BOCs' provision of NDA services will foster competition in the directory assistance marketplace; and, 4.) a requirement that the Regional Bell Holding Companies (RBHCs) must provide local directory assistance from the BOCs and NDA from another company would be inefficient and costly to the RBHCs and the consumer.

SBC also wants to inform the Commission that SBC will begin providing NDA service through its telephone company operations in mid-second quarter, 1998. SBC believes it will be providing a valuable service to its customers and that there are no statutory prohibitions against the BOCs' provision of NDA.

National Directory Assistance is an Adjunct-to-Basic Service

In determining whether SBC's BOCs have the legal right to offer NDA, it is necessary to determine the nature of the service. The provision of NDA is an adjunct-to-basic service. The Commission has previously found that directory assistance is an adjunct-to-basic service. Specifically, the Commission found in its *NATA/Centrex* Order:

The significance of purpose of identifying a "basic" adjunct to basic service is perhaps most clear in the case of directory assistance. When a customer uses directory assistance, that customer accesses information stored in a telephone company data base. ...The only significant difference between Dial-it and directory assistance is that the latter service provides only that information about another subscriber's telephone number which is necessary to allow the use of the network to place a call to that other subscriber. An offering of access to a data

base for the purpose of obtaining telephone numbers may be offered as an adjunct to basic telephone service... : In the Matter of North American Telecommunications Association; Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment; 101 FCC 2d. 349, (Paragraph 26).

More recently, the FCC in its *CPNI Order* reaffirmed this principle, "Examples of adjunct-to-basic services include...computer provided directory assistance...: In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; CC Docket No. 96-115, (Paragraph 73), citing the *NATA/Centrex Order*. See also, In the Matter of Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934 as amended, First Report and Order FCC 96-489, (Paragraph 122), FCC 96-489, (Paragraph 107) "We further find, as suggested by Pactel, that services that the Commission has classified as "adjunct to basic" should be classified as telecommunications services, rather than information services." Paragraph 107 then cites the *NATA/Centrex Order* "Adjunct-to-basic services include ...computer-provided directory assistance...". (Id. Footnote 245).

NDA will serve the same function as existing directory assistance. It is intended to facilitate the use of traditional telephone service and does not alter the fundamental purpose of telephone service. With SBC's BOCs' provision of NDA service, a customer will be able to access a computer data base through the operator to obtain a telephone number of a customer in a different area code whose number he does not know. SBC's BOCs' provision of NDA service will therefore facilitate the use of traditional telephone service by enabling the customer to place a call. Furthermore, SBC's BOCs' provision of NDA service does not alter the fundamental purpose of telephone service, the transmission of telephone calls, since NDA does not provide a customer access to a data base for purposes other than obtaining a telephone number to place a call. SBC's BOCs' provision of NDA service, therefore, is clearly an adjunct-to-basic service that will bring a number of benefits to the public.

Admittedly, SBC's BOCs' provision of NDA service does expand the geographic scope of listings that will be available. It will also provide directory assistance listings that will be used by the customer to complete a call to an end user sometimes not in our telephone companies' territories. The Commission's classification of individual services as an adjunct-to-basic service, however, has always been based upon the purpose served by the service, not the geographic scope of the service involved. Specifically, the Commission found in its *NATA/Centrex Order* that it did not intend its definition of enhanced service to prohibit carriers from using the processing and storage capabilities within their networks to offer services that facilitate the use of traditional telephone service. The Commission then ruled that computer processing applications, such as speed dialing, call forwarding, and directory assistance, were adjunct-to-basic services

because they facilitated the use of traditional telephone service and the telephone companies should not be foreclosed from offering these valuable services to its customers. (*NATA/Centrex Order*, Paragraph 23). The Commission did not distinguish between local and long distance calls the customer designated for speed dialing and call forwarding in determining those features were an adjunct-to-basic service.

Furthermore, the issue of whether the provision of a foreign listing is an adjunct-to-basic service has been previously considered by the Common Carrier Bureau when it reviewed Southwestern Bell Telephone Company's (SWBT) Petition for Waiver of Part 69.4(b) of the Commission's Rule to provide DirectLine Custom service. SWBT's DirectLine Custom service permits customers to obtain local and foreign listings throughout SWBT's territory by entering the subscriber's name from a remote computer. The Computer Software and Services Industry Association (ADAPSO) and Compuserve filed comments contending DirectLine Custom was an enhanced service. The BOCs, AT&T and MCI filed comments supporting SWBT's position that DirectLine Custom was a basic service. The Common Carrier Bureau found that under the standard described in the *NATA/Centrex Order* : ...for determining whether a service is "basic" or "enhanced," we believe DLC [DirectLine Custom] is properly classified as an "adjunct to basic service." In the Matter of Southwestern Bell Telephone Company, Petition for Waiver of Section 69.4(b) of the Commission's Rules, Revisions to Tariff F.C.C. No. 68, 5 FCC Rcd 3792, (Paragraph 12). Precedence, therefore, exists for finding the provision of foreign listings to SBC's customers is an adjunct-to-basic service. For the above reasons, the Commission should find that NDA is an adjunct-to-basic service.

#### National Directory Assistance is not an InterLATA Service

Is the provision of NDA an interLATA service under the Telecommunications Act? The answer to that question is no. The Telecommunications Act defines InterLATA service as telecommunications between a point located in one LATA and a point located outside the LATA. Section 153(a)(21). Telecommunications is defined in Section 153 (a)(43) as "...the transmission, between or among points specified by the user..." With NDA service, the end-user customer requesting a number from another NPA will not be specifying a transmission between points located in different LATAs. Instead, the customer will be calling 411, a local number. The transmission specified by the end-user customer is local, not interLATA. SBC's BOCs will not be transmitting the end-user's call across LATA boundaries with NDA service. <sup>1</sup>

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<sup>1</sup> Directory Assistance serves geographical areas larger than individual LATAs. Therefore, there are some instances where the customer's call will cross LATA boundaries. The MFJ Court, however, explicitly authorized these calls under the Official Communication Service exception. 569 F.Supp 1057, 1097-1101 (D.D.C. 1983).

Depending on the listing requested by the end-user customer and the location of the databases that will be used to provide NDA, SBC's BOCs query to retrieve the requested number may cross LATA boundaries. The end-user customer, however, does not specify the query's path. The end-user customer calls a local number to obtain a listing for someone located in another NPA. The end-user customer does not instruct the operator on the path of the query or on how to provide the listing, such as reading the listing from the white pages, off a CD-ROM disk, or through a query to a computer data base located in the same or a different LATA. The customer leaves the task of how the number will be provided and the query's path to the telephone company. The provision of NDA, therefore, is not the provision of an interLATA service under the Telecommunications Act because the specified path of the end-user's call is local and the path of the query to provide the listing from a computer data base is specified by the telephone company. Such queries are also signaling information to the data base to retrieve directory listings. Under the Telecommunications Act, the BOCs are now entitled to provide signaling information associated with both intraLATA services and interLATA services on a centralized basis pursuant to Section 271(g)(5).

The Commission has also recognized that the BOCs may perform certain interLATA call processing functions in connection with an intraLATA information service without transforming that information service into an InterLATA information service. *Non-Accounting Safeguards of Section 271 and 272*, First Report and Order, (Paragraph 122). The same principles should apply to adjunct-to-basic services, such as NDA.

In addition, as previously stated in our reply comments, customers are already able to receive listings for telephone numbers located outside the LATA if such numbers are included in the local white pages directory and database. For example, Southwestern Bell Telephone Company's Missouri database contains over 24,000 foreign listings. Likewise, Pacific Bell's California database includes over 44,000 accounts for 800/888 service which could potentially provide service outside the originating LATA. These foreign listings have been an integral and permissible part of the directory assistance databases for a number of years. Allowing additional foreign listings to be available pursuant to NDA service merely expands the geographic scope of available listings and does not transform the service into an interLATA service. In addition, many BOCs have long-standing agreements with independent telephone companies to include their subscriber listings in the BOCs' directory assistance databases. The Telecommunications Act also requires the inclusion of competing carriers' subscriber listings. To accept arguments that NDA is an interLATA service would mean that all listings outside the local calling scope must be removed as violating Section 271. Such a conclusion is contrary to the law.

SBC would also point out that other companies' provision of national directory listings is not an interLATA service. For example, a customer can purchase software in Dallas that allows

the customer to look up a number in Los Angeles. The company supplying the software has not engaged in an interLATA service. Nor would it be an interLATA service if SBC's BOCs were to provide its operators with a CD-ROM disk or directories for every major city so the operators could provide a customer directory listings throughout the country. Reading a phone number from a CD-ROM disk or a directory is not an InterLATA service, but the provision of a telephone number. Simply because a directory listing may be retrieved from a database located in another LATA does not transform the provision of a telephone number, into an InterLATA service. We, therefore, believe providing national directory listings is not an interLATA service.

In addition, SBC's BOCs have a first amendment right to communicate with their customers. The first amendment provides, "Congress shall make no law...abridging the freedom of speech...". Corporations are entitled to the protection of the First Amendment. "The identity of the speaker is not decisive in determining whether speech is protected. Corporations ...contribute to the "discussion, debate, and dissemination of information and ideas" that the First Amendment seeks to foster.<sup>2</sup> Laws that single out a group of speakers in an industry for special restrictions on speech have long been recognized as constitutionally suspect.<sup>3</sup> Such "narrow targeting" of speakers within a class offends the First Amendment and may only be upheld if there is a compelling state interest.<sup>4</sup> No governmental interest has been advanced as to why SBC's BOCs should be prevented from providing telephone customers NDA, except the government's interest in protecting against a perceived threat of anticompetitive conduct. SBC would point there is no evidence of anticompetitive conduct and the government is protecting against a danger that may or may not occur. Moreover, protecting against potential, future anticompetitive behavior that may or may not occur can and has been accomplished through much narrower means than prohibiting SBC's BOCs' employees from communicating with their customers by providing NDA services.

Specifically, Congress has already mandated in Section 251 of the Telecommunications Act that SBC's BOCs: 1) provide competitors with reasonable, nondiscriminatory access to directory assistance; and 2) permit CLECs to purchase directory assistance services at wholesale rates for resale. The enactment and enforcement of these provisions if necessary will ensure that SBC's BOCs do not discriminate in providing better service to its directory assistance services than provided to competitors. SBC's BOCs have entered into agreements with a number of CLECs to provide them directory assistance listings and access to our directory assistance database. The government's interest in creating competition in the local directory assistance marketplace therefore can be and has been accomplished through much narrower means than prohibiting SBC's BOCs ability to communicate NDA listings to their customers. Besides tailoring a narrow remedy, the FCC should also seek to construe a statute so as not to raise

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<sup>2</sup> Pacific Gas & Elec. v. California P.U.C., 475 U.S. 1, 89 L.Ed. 2d 1, 106 S.Ct. 903.

<sup>3</sup> Minneapolis Star & Tribune, 460 U.S. 591, 75 L.E. 2d. 295, 103 S.Ct. 1365.

<sup>4</sup> Id. at 303.

doubts about its constitutionality.<sup>5</sup> The FCC, therefore, should find that the BOCs, including SBC's BOCs can provide NDA listings to their customers under the Telecommunications Act.

Even if the FCC does view the issue of whether the provision NDA is an interLATA service as a close call, a view SBC does not share, the Commission should find NDA does not constitute an interlata service because such a finding will keep customers from obtaining services they want at lower rates, and it will impede competition. Similarly, requiring SBC to offer NDA from a separate affiliate will have the same impact.

#### Undeniable Consumer Benefit

Consumers want to be able to dial one number and obtain a directory listing for any number in the country. The proliferation of new area codes has driven this demand to new levels. Since January 1, 1995 more than 90 new NPA codes have been introduced, which is more than one new NPA code every two weeks. In SBC's territory more than twenty new NPA codes have been introduced in three years. As a result, it is often an extremely frustrating process to obtain the number for someone who lives in another part of the country.

SBC believes consumers should not be forced to struggle to obtain a telephone number or be denied any choice of reasonable means to obtain that number. Thus, they should not be required to look through their directories to find the area code before dialing for information. Nor should they be required to call the operator to ask for an area code, forced to hang up, and then dial another operator. Consumers should be able to simply place one call to obtain a number. SBC's BOCs' provision of NDA service answers these real customers needs. Customers will be able to place one call to 411 and obtain a listing for anyone in the country. In deciding US West's petition the FCC should take this important consumer benefit into consideration.

#### Foster Competition

SBC believes its provision of NDA services will foster competition in the NDA marketplace. Shortly after US West began providing NDA in its territory, Bellcore reported AT&T began trialing its 00-Info (Double 0h Info) NDA service in US West's major metropolitan areas of Denver, Minneapolis, Phoenix, and Seattle. In October 1997, AT&T began offering 00-Info service in states where US West and BellSouth are offering or plan to offer NDA service. AT&T claims its services are better than others because its operators are specially trained and will remain on the call with the customer until the call is completed. US West, BellSouth, and AT&T are now competing to provide NDA to the public.

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<sup>5</sup> St. Martin Lutheran Church v. South Dakota, 451 U.S. 772, 68 L.E. 2d. 612, 101 S.Ct. 2142

SBC is confident its experience will be the same. As soon as SBC introduces its NDA service, AT&T and other carriers will begin offering NDA service and advertise that their services are better than services provided by other companies. Each company will compete to provide the customer the best value in terms of price, service, and accurate listings, all to the consumer's benefit. In addition, SBC's BOCs provide access to directory assistance service and directory listing information on a nondiscriminatory basis to CLECs and other providers of directory assistance. Thus, when SBC's BOCs are providing directory assistance service on a wholesale basis to a CLEC, the CLEC's customers will have access to the same NDA service offered to our own retail customers. CLECs will also be able to offer their local and NDA service over the 411 dialing code with customized routing. CLECs or other competing providers of directory assistance service can arrange for access to SBC's BOCs' directory listing information or direct access to the directory assistance database. Competitors of SBC's BOCs, therefore, will be able to compete against us using the 411 dialing code.

SBC rejects those claims that the BOCs' use of the 411 dialing pattern will constitute an unfair and unreasonable competitive advantage in providing NDA. Dialing 411 will be a convenience for many customers, but many customers will continue to dial 1+NPA-555-1212 to obtain a directory listing. SBC's BOCs will therefore be competing for customers dialing 1+NPA-555-1212 and companies offering their own NDA service. This competition will result in lower prices and better services for consumers.

#### Unfairness of a Separate Affiliate Requirement

Arguments that the FCC should require the BOCs to offer NDA from a separate affiliate would result in a manifest inefficiency and competitive unfairness to SBC. SBC would be required to employ two sets of operators, one to provide local directory assistance, and another set to provide NDA. We would also have to purchase and maintain separate equipment for both sets of operators, obtain new facilities and provide separate training for the operators providing NDA, maintain separate books and financial records, and establish separate personnel and administrative functions and procedures; while our competitors could provide local and NDA from one company using the same operators, equipment, and facilities. SBC would be placed at a significant disadvantage if it must maintain two separate sets of operators, equipment, and facilities and would have to seriously evaluate whether it could even enter the NDA market. In today's competitive marketplace, a company cannot maintain duplicative employees, equipment, and facilities, and realistically hope to compete.

Nor can Nevada Bell, Pacific Bell, or Southwestern Bell Telephone Company simply transfer their directory assistance operators providing local directory assistance to a separate affiliate to provide both local and NDA services. State regulatory commissions will not permit a separate affiliate to use the 411 dialing code. Our operators, therefore, will have to remain with the telephone company to provide local directory assistance over the 411 dialing code. The Commission, therefore, should reject attempts to hinder the BOCs' entry into the NDA



marketplace with a separate affiliate requirement. Instead, the Commission should permit the BOCs to use one set of operators, equipment, and facilities in providing local and NDA, just as other carriers already do.

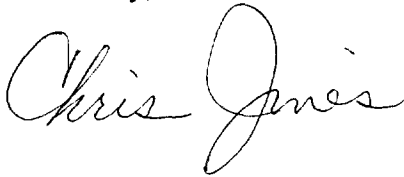
In addition, SBC believes it will result in a higher cost and greater inefficiencies for the consumers if the FCC were to require the BOCs to provide NDA from a separate affiliate. The consumer would need to remember or look up one number for local directory assistance and another number for NDA. Consumers would also have to pay higher prices if NDA were offered by a separate affiliate.

#### Conclusion

Three BOCs, Ameritech, BellSouth, and US West are currently providing NDA, as well as, the major carriers. Other companies are entering the NDA market with a range of new products, including companies providing CD-ROM software, Screen Phones, Personal Digital Assistants, and Internet Delivery of Directory Services. In today's competitive environment waiting to offer a service or product until after your competitors introduce and offer a similar service or product, places your company at an extreme competitive disadvantage in the marketplace. SBC firmly believes its NDA service will address a real customer need, increase competition in the directory assistance business, and is not prohibited by the Telecommunications Act or any other statutory provisions.

Questions regarding this matter should be referred to me at 202-326-8879.

Sincerely,

A handwritten signature in cursive script that reads "Chris Jones". The signature is written in dark ink and is positioned below the word "Sincerely,".

CC: Audrey Wright  
Paula Silberthau